

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

**Lida Johnson,** )  
                        )  
                        )  
**Plaintiff,**       )  
                        )  
                        )  
**V.**                   )      **Case No. 10-1017-CV-W-JTM**  
                        )  
                        )  
**Stephens & Michaels Associates, Inc.,** )  
                        )  
                        )  
**Defendant.**       )

**ORDER**

Pending before the Court is DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM UNDER RULE 12(b)(6), filed December 15, 2010 [Doc. 10].

In her FIRST AMENDED COMPLAINT plaintiff alleges that during the year prior to filing her COMPLAINT, while attempting to collect a debt from her, representatives of the defendant "caused her telephone to ring continually and engaged Plaintiff in conversation repeatedly with intent to annoy and harass Plaintiff in violation of 15 U.S.C. 1692d preface and d(5)." She also alleges "the Defendant failed to meaningfully disclose its identity in violation of 15 U.S.C. 1692d preface and d(6)." Defendant contends the complaint should be dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state a claim<sup>1</sup> because Plaintiff's allegation are impermissibly

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<sup>1</sup> Defendant seeks dismissal with prejudice, arguing that plaintiff "lied to the Court" as evidenced by a difference in allegations in the Complaint from those in the Amended Complaint. Hyperbole aside, in considering a Rule 12(b)(6) motion the Court "must accept as true all of the allegations contained in a complaint." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009).

vague – primarily because the FIRST AMENDED COMPLAINT does not set forth the exact time, frequency, number or content of the allegedly harassing telephone calls. Although Plaintiff's FIRST AMENDED COMPLAINT may indeed define the margin of pleading an acceptable factual basis, after reviewing the FIRST AMENDED COMPLAINT in its entirety and as a whole, the Court finds that Plaintiff has provided sufficient factual matter to state a plausible claim to relief under the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. Accordingly, it is

**ORDERED** that DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM UNDER RULE 12(b)(6), filed December 15, 2010 [Doc. 10] is **DENIED**.

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*/s/ John T. Maughmer*  
**JOHN T. MAUGHMER**  
**U. S. MAGISTRATE JUDGE**